

Miami Valley Communications Council

Technology for local governments

Centerville Germantown Kettering Miamisburg Moraine Oakwood Springboro West Carrollton

January 26, 2006

Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

Dear Marlene Dortch:

Attached are comments by the Miami Valley Communications Council (MVCC) in the matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992; MB Docket No. 05-311.

The MVCC is a Regional Council of Governments, pursuant to Chapter 167 of the Ohio Revised Code, which has responsibility for negotiating and administering the cable franchise for the municipalities of Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro, and West Carrollton, in Southwest Ohio.

Please process these comments on our behalf.

Respectfully,

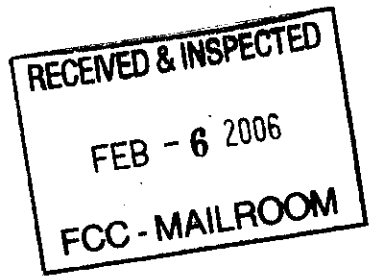
Glenn Alexander
Interim Executive Director

Attachment: Original & Four Copies

CC: Member Cities
Board Members

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the matter of)
Implementation of Section 621(a)(1))
Of the Cable Communications Policy)
Act of 1984 as amended by the Cable)
Television Consumer Protection)
and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF MIAMI VALLEY COMMUNICATIONS COUNCIL

These Comments are filed by Miami Valley Communications Council ("MVCC") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, MVCC believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our communities.

Cable Franchising in Our Communities

MVCC is a council of governments in southwest Ohio which provides municipal communications and technology related support to the cities of Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro and West Carrollton, Ohio, with a population of approximately 150,000 citizens. Our franchised cable provider is Time Warner Cable ("TWC"). MVCC has negotiated cable franchises since 1975.

Our current franchise began on June 30, 1987 and expires on June 30, 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to MVCC in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system:

A. -One governmental access channel, one educational access channel, and one public access channel on the distribution hub contemplated by this franchise;

B. -And as utilization requires, one governmental access channel, one educational access channel, and one public access channel to be used jointly under this and Parallel Ordinances, for a possible total of six (6) channels.

We currently utilize four (4) channels: (1) channel devoted the public access; one (1) devoted to educational access; and two (2) channels devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: TWC is responsible for the normal repair and replacement of PEG access equipment that they provide to MVCC. TWC will comply with requests for replacement equipment by ordering such equipment within forty-five (45) days of receiving, in writing, such requests. Replacement equipment shall be equivalent to the equipment being replaced. If such equipment is obsolete or no longer practical, other equipment may be substituted by mutual agreement.

TWC is responsible for all maintenance of three (3) mobile, cable casting vans provided to MVCC for PEG access. MVCC shall insure the vans and shall be responsible for the gasoline and oil to operate the vehicles. The vans currently owned by MVCC shall be replaced by TWC, at a cost not to exceed \$16,667. Each van, at TWC's expense, will thereafter be replaced with an equivalent van with necessary modifications after six (6) years of operation.

After the educational access channel was activated, the cable company provided \$30,000 to MVCC for purchasing additional video production equipment for the participating public school districts.

Our franchise contains the following institutional network ("I-Net") requirements:

A. -The cable company shall institute its Basic Subscriber Service on what shall be known as Cable A. On Cable A, the cable company shall provide subscribers with a converter by which means said subscribers will be able to receive a minimum of thirty (30) channels. Said converter or other device will be designed to permit closed circuit and selective viewing through the deletion or addition of filters or tuning elements. Cable A shall also provide up to four (4) reverse transmission channels to feed local programming to the City's hub.

B. -The cable company shall construct an institutional network on what shall be referred to as Cable B. Cable B shall be capable of delivering seventeen (17) channels in the forward direction and transmitting, in the reverse direction, eighteen (18) channels for video or non-video uses on either an open or closed circuit basis. The cable company shall provide the appropriate connectors and extend cable to an access point within each institution, but the users of Cable B will provide their own terminal equipment.

C. -Assuming demand in excess of what can be reasonably accommodated on Cable A and/or B, the cable company shall provide, at a time and upon terms to be mutually agreed upon by the cable company and MVCC, an additional subscriber service cable to be designated Cable C and/or an additional institutional service cable to be designated Cable D.

D. -The cable company shall provide technical assistance to MVCC to facilitate the maximum use of the institutional network on Cable B.

We use our I-Net facilities in the following ways. Administrative information exchange between our school systems; video arraignment in the various court systems; traffic system flow and control; police surveillance and criminal data exchange; information exchange between various member cities and their departments; connection to the internet; connection to county court house records, and electronic commerce connections.

Our current franchise barely mentions requirements regarding emergency alerts. We are in the process of negotiating a new franchise agreement which will contain a major upgrade in emergency notification capabilities for our member cities, designated areas, and/or neighborhoods. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. MVCC has had to contract with an emergency alerting system for our members, at our own expense.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

A. -The cable company shall render prompt and efficient service and repairs, and shall voluntarily interrupt service only for Good Cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use.

B. -Without additional charges to the subscriber, the cable company shall maintain its facilities in good working order and repair. Any verbal, telephonic, or written complaint relating to the quality or continuity of service shall be attended to within a normal service interval. In the event that such complaints are not responded to, or service is not restored to the levels

required by the FCC during said normal service interval, the subscriber shall be entitled to a rebate of one-thirtieth (1/30) of his monthly service fee for each day or part thereof between the end of the normal service interval and the time service is restored to said standards.

C. -Compliant Procedure: Any subscriber, user, programmer, or member of the general public who has a complaint regarding the quality of cable television service, equipment malfunctions, billings, or any other matters, which remains unresolved for thirty (30) days after it has been brought to the cable company's attention, in writing, may file said complaint, in writing, with MVCC's designee (Complaint Officer) who shall have primary responsibility for the continuing administration of complaint procedures hereunder.

D. -Upon receiving a complaint, the Complaint Officer will notify the cable company and make an investigation to determine whether or not there is probable cause to credit the allegations. If after the investigation there is probable cause to credit the allegations of the complaint, the cable company will be notified and shall promptly endeavor to resolve the matter by conciliation or persuasion. The franchise agreement contains considerable detail about the remainder of the process in terms of time to respond and various steps in the process.

Our franchise requires that the cable operator currently provide service in the following areas of our communities. The cable company shall provide basic subscriber service to all dwelling units located within any annexed territories where the density is at least fifty (50) housing units per stand mile or the proportion of aerial to underground cable in the annexed area is less than exists in the city prior to the date of said annexation. The cable company shall, upon request and subject to the prior approval of MVCC, establish a schedule of rates and charges whereby service will be offered to potential subscribers in said annexed area. The cable company shall have no obligation to provide service in any area if said area cannot, for technical reasons, be served from the cable company's existing head-end(s).

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: The cable company agreed to maintain its cable television system in conformity with the generally accepted state of the art technology for such systems of comparable size and age to the system serving the cities. In June 1991 the cable company submitted a proposal for rebuilding and/or upgrading the system serving our cities. Such rebuild/upgrade was to incorporate the generally accepted state of the art technology for systems of comparable size and was to commence no later than June 1992, and was to be completed within three (3) years, subject to extension for good cause. The cable company has upgraded the system to fiber, providing HD and digital cable programming, cable modem service and cable provided telephone service.

Our franchise contains a "level playing field" provision which states the following: The cities reserve the right to grant a non-exclusive franchise for use of said public ways to any person or group of persons at any time during the period of this franchise.

Our franchise contains the following insurance and bonding requirements:

A. -A faithful performance bond running to the Cities in the sum of \$50,000 conditioned upon the faithful performance of the cable company of all terms and conditions of this franchise and upon the further condition that, in the event the cable company fails to comply with any law, ordinance, rule or regulation governing this franchise, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damage or loss suffered by the cities as a result, including the full amount of property of the cable company, plus costs and reasonable attorney's fees up to the full amount of the bond.

General Indemnification

B. -The cable company shall save and keep the cities and MVCC and their officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of, or resulting from, the operation of the cable system or any provision of the franchise. The cable company shall, at its sole cost, defend and indemnify the cities and MVCC from any charges, claims, suits, cases of action, penalties, fines and costs (including, but not limited to, reasonable legal fees and court costs) caused by, or arising out of this franchise or the construction, operation or maintenance of the cable system pursuant thereto, provided, however, the cable company shall have no obligation to pay damages, penalties or fines which are levied on the Cities/MVCC as a result of a finding that its officials, employees or agents were involved in willful misconduct or fraud.

C. -The cable company shall maintain through the term of this franchise, liability insurance insuring the Cities, MVCC and the cable company with regard to all damages and penalties in the minimum amounts of:
\$1,000,000 bodily injury or death to any one person, within the limit of
\$2,000,000 for bodily injury or death resulting from any one accident.
\$2,000,000 for property damage resulting from any one accident.

D. -Cable Company shall establish and maintain throughout the term hereof the following bonds:

Rebuild- \$1,000,000

Faithful Performance bond - \$50,000

Annual Blanket Bond \$2,000

E. -The cable company has thirty (30) days from signing the franchise agreement to furnish proof of all required insurance and bonding requirements, by providing copies of said policies and written evidence of payment for these policies.

Liquidated Damages

F. -Failure to provide or replace the PEG access equipment as specified will be \$50 per pay or part thereof.

G. -Failure to provide the PEG access facilities as specified in the franchise agreement will be \$50 per day or part thereof.

The franchise grants the cable company access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office before it may access the public rights of way in the cities of Centerville, Kettering, Miamisburg, Moraine, Oakwood and West Carrollton. The cities of Germantown and Springboro do not require the cable company to obtain a permit before it accesses the public rights-of-way.

The franchise agreement provides for numerous enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement. These include rights on inspection, rights of audit, liquidated damages provisions, and rights of removal and revocation of the franchise.

The Franchise Process

Miami Valley Communications Council has a membership of eight cities which are covered under a single franchise agreement. The franchise agreement is approved individually by Resolution and/or Ordinance by each member city, thereby approving a master franchise agreement.

Under the law, a cable franchise functions as a contract between the local government or local franchising authority and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process - to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: During the term of this franchise, the cable operator

shall comply with all present and future applicable laws, rules and regulations, and any amendments thereto, promulgated by any federal, state, or local authority of competent jurisdiction, including but not limited to the laws, rules, and regulations of the FCC and the Cities.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, it is the intent of Article XI, Section 76 to provide for the orderly resolution of any controversy or dispute between MVCC, member cities and the cable company arising out of the enforcement of interpretations of this chapter or any rule, regulation, or procedure relating to cable communications matters. Fact finding, mediation and arbitration shall be the means of resolving such controversies or disputes wherever possible. None of these methods, however, shall be the first resort of the parties, but shall be undertaken only after a reasonable time has been expended in good faith negotiation. If both parties mutually agree, fact finding and/or mediation may be skipped. Article XI goes on to define the precise process to execute the steps for resolution.

Competitive Cable Systems

Our communities were approached once by a competitive provider, but the provider lost financial backing. MVCC has not denied any provider the opportunity to provide service in our communities and we would be in a position to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well at MVCC. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local communities are met, and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specific local interest.


Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Miami Valley Communications Council, on behalf of the eight Ohio cities we represent, therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

We are greatly concerned that diminishing local government control over cable franchising also muffles the voice of the people concerned about commercial operations in their own communities. It is understandable that the federal government wants, and perhaps needs to be involved in national communications issues. However, local cable franchises involve only the transmission of information across a restricted metropolitan area, the boundaries of which are generally consistent with the boundaries of the local or regional governing authority of the area served. As such, it is the local government and local franchise authority that should have full control over contract negotiations, as found in the current federal law, for these services.

Respectfully submitted,

MIAMI VALLEY COMMUNICATIONS COUNCIL

By: 
Glenn Alexander, Interim Executive Director
1195 East Alex-Bell Road
Centerville, OH 45459

Cc: City of Centerville
Village of Germantown
City of Kettering
City of Miamisburg
City of Moraine
City of Oakwood
City of Springboro
City of West Carrollton
NATO

Filing Instructions

Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. Instructions for both forms of filing are included below. Comments must be filed by February 13, 2006 in order to be included in the comment round. Otherwise, they can be submitted until March 14, 2006 to be considered in the Reply Comment round. Comments must also be sent to FCC staff – John Norton (John.Norton@fcc.gov) and Andrew Long (Andrew.Long@fcc.gov). We also ask that a copy be sent to info@natoa.org.

Filing Electronically

Comments filed through the ECFS can be sent as an electronic file via the Internet at <http://www.fcc.gov/cgb/ecfs> or else they may be sent via the Federal eRulemaking Portal at <http://www.regulations.gov>. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number: which in this case is MB Docket No. 05-311. More detailed instructions are available on the FCC website and on NATOA's website.

Parties may also submit an electronic comment by Internet e-mail. These are instructions for members of the public who want or need to send comments on FCC Proceedings via Email instead of through the Electronic Comment Filing System's interactive web site. Click on one of the links below to review instructions and information. If you need further assistance, please contact the Help Desk at ecfshelp@fcc.gov or (202) 418-0193.

[Instructions](#) ; [Blank Form](#) ; [Data Requirements](#) ; [Sample Forms](#)

Filing by Mail or in Person

Parties who choose to file by paper must file an original and four copies (for a total of five) of each filing in MB Docket No. 05-311. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. However, note that comments must be received by the due date, regardless of when the comments were mailed, and that U.S. Postal Service mail is typically delayed and may make the filing late. All filings must be sent to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission to one of the following addresses:

- Filings via U.S. Postal Service should be addressed to 445 12th Street, S.W., Washington D.C. 20554.
- Filings via commercial overnight mail (other than U.S. Postal Service mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Filings via hand-delivered or messenger-delivered filings must be delivered to the Commission's filing location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this facility are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Note that in accordance with FCC rules, any local government named in the comments of any party must be served with a copy of the comments to provide them with an opportunity to respond. Otherwise, the comments may be disregarded as violating the FCC's ex parte rules. See, Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, Memorandum Opinion and Order, 14 FCC Rcd 18831 (October 28, 1999).